

## REMARKS

Claims 1-24 are pending. An Office Action mailed October 3, 2007 rejected Claims 3 and 22 under 35 U.S.C. § 112, Claims 17-24 under 35 U.S.C. § 102 and Claims 1-16 under 35 U.S.C. § 103. By way of this Amendment Applicant hereby amends Claims 1, 3, 9 and 22. Pursuant to 37 C.F.R. § 1.111, Applicant hereby respectfully requests reconsideration of the application.

### REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected Claims 3 and 22 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant hereby amends Claims 3 and 22 in order to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

### REJECTION OF CLAIMS UNDER 35 U.S.C. § 102

The Office Action rejected Claims 17-24 as being anticipated by *Walker et al.* (hereinafter *Walker*). The Office Action states that *Walker* discloses a computer readable medium containing computer instructions for receiving a request to purchase a first item from a customer, calculating a discount on a second item, receiving a request and confirmation to purchase the second item and fulfilling an order to complete the purchase of the first and second items. Applicant respectfully traverses this rejection. Applicant submits that the only thing that *Walker* calculates is a rounded price that is a rounding up of the purchase price to a whole number. From that *Walker* calculates a round-up amount equal to the difference between the purchase price and the rounded price. *Walker* then compares the round-up amount with up-sale prices that are stored in the database. The up-sale prices correspond to second items. If the POS terminal identifies an up-sale price that corresponds to the round-up amount the customer is notified that they can purchase the second item associated with the corresponding up-sale price. If the customer accepts the up-sale item, the cashier makes the selection and the customer pays



the round-up amount and thus receives in exchange the first item and the second item (col. 2, lines 19-44). Applicant submits that *Walker* makes no mention of calculating a discount on the purchase price on a second item that is being offered for sale. All that occurs in *Walker* is that a second item is offered for sale if it has a price that corresponds to the round-up amount. Therefore, Applicant submits that it appears from the citations identified in *Walker* that *Walker* fails to teach or suggest calculating a discount on the purchase of the second item being offered for sale after the request to purchase the first item has been received. Therefore, Applicant submits that amended independent Claim 17 is allowable over the cited reference.

Applicant submits that because Claims 18-24 depend from allowable independent Claim 17, they are allowable for the same reasons that make Claim 17 allowable.

Applicant submits that Claims 19 and 20 are allowable for the following additional reasons. Applicant submits that *Walker* does not base the price of the second item on anything other than the price associated with the second item that is stored in the database (col. 2, lines 29-32). Thus, Applicant submits that *Walker* does not teach that calculating a discount of the second item is based on the identity or the price of the first item. The price and identity of the first item in *Walker* are only used to determine a rounded price and thus a round-up amount that is used to compare to any database-stored up-sale prices for second items. Therefore, Applicant submits that Claims 19 and 20 are allowable for this additional reason.

#### REJECTION OF CLAIMS UNDER 35 U.S.C. § 104

The Office Action rejected Claims 1-16 as being unpatentable over *Walker* in view of *Swartz et al.* (hereinafter *Swartz*). Applicant respectfully traverses this rejection.

Applicant submits that independent Claim 1 includes similar subject matter as that argued above with regard to independent Claim 17. Also, Applicant submits that *Swartz* fails to overcome the deficiencies noted above with regard to *Walker*. Therefore, Applicant submits that amended independent Claims 1 and 9 are allowable for the same reasons that make independent

Claim 17 allowable. Because Claims 2-8 and 10-16 dependent from allowable independent claims, they are allowable for the same reasons that make their corresponding independent claims allowable.

Also, Applicant submits that Claim 10 is also allowable for the additional reasons discussed with regard to Claim 20 above. Therefore, Applicant submits that Claim 10 is allowable for this additional reason.

### CONCLUSION

Applicant believes that the Claims of the pending application are now in condition for allowance over the cited references. Accordingly, Applicant respectfully requests withdrawal of the rejections, allowance, and early passage through issuance. If the Examiner has any questions, the Examiner is invited to contact the Applicant's agent listed below.

Respectfully submitted,

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